

**ORAL ARGUMENT NOT YET SCHEDULED****No. 25-1004**

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**In the United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**UNITED STATES STEEL CORPORATION; NIPPON STEEL NORTH  
AMERICA, INC.; AND NIPPON STEEL CORPORATION,***Petitioners*

v.

**THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES ET  
AL.***Respondents*

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**BRIEF OF AMICI CURIAE, KEIDANREN (JAPAN BUSINESS  
FEDERATION), THE JAPAN CHAMBER OF COMMERCE AND  
INDUSTRY, KEIZAI DOYUKAI (JAPAN ASSOCIATION OF  
CORPORATE EXECUTIVES), AND THE JAPAN-U.S. BUSINESS  
COUNCIL IN SUPPORT OF PETITIONERS**

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## **RULE 28(A)(1) STATEMENT**

Pursuant to Circuit Rule 28(a)(1), Keidanren (Japan Business Federation), the Japan Chamber of Commerce and Industry, KEIZAI DOYUKAI (Japan Association of Corporate Executives), and the Japan-U.S. Business Council provide the following list of parties to this case, rulings under review, and related cases:

### **(A) Parties and Amici**

All parties in this Court are listed in the petitioners' opening briefs. In addition to this amicus brief, amici are aware that the following persons/groups have filed notices expressing the intent to file an amicus brief: "certain local governmental officials and local union officials in the Monongahela Valley and Gary, Indiana"; The Allegheny Conference on Community Development; and "Former National Security and Law Enforcement Officials." The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO have moved to intervene.

### **(B) Rulings Under Review**

References to rulings under review appear in the Petition on file with this Court and in Petitioners' opening brief.

### **(C) Related Cases**

References to related cases appear in the Petition on file with this Court and in Petitioners' opening brief.

## **CORPORATE DISCLOSURE STATEMENT**

Keidanren (Japan Business Federation), the Japan Chamber of Commerce and Industry, KEIZAI DOYUKAI (Japan Association of Corporate Executives), and the Japan-U.S. Business Council are non-profit organizations with the general nature and purpose of representing the interests of Japanese business and industry. Amici are not publicly held corporations, do not issue stock, do not have parent corporations, and, consequently, there exists no publicly held corporation that owns ten percent or more of Amici's stock.

## **RULE 29 STATEMENT**

Pursuant to Circuit Rule 29(d), Amici have joined together in this Amici Curiae Brief but joinder with other Amici is not practicable because no other Amici will address the unique perspective that Amici have, as leading voices of Japanese business and industry, regarding the Presidential decision to block the acquisition of U.S. Steel by Nippon Steel. Amici state that no party or party's counsel authored this brief in whole or in part or contributed money to fund preparing or submitting this brief, and no person or entity—other than Amici Curiae, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

## TABLE OF CONTENTS

	Page
<b>RULE 28(A)(1) STATEMENT .....</b>	<b>i</b>
<b>CORPORATE DISCLOSURE STATEMENT .....</b>	<b>ii</b>
<b>RULE 29 STATEMENT .....</b>	<b>iii</b>
<b>TABLE OF AUTHORITIES .....</b>	<b>v</b>
<b>GLOSSARY .....</b>	<b>1</b>
<b>STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE OF AMICI CURIAE.....</b>	<b>2</b>
<b>ARGUMENT.....</b>	<b>5</b>
I.    Japan and the United States are close allies with a strong, longstanding, and mutually beneficial national security, political, economic and cultural relationship. ....	6
A.    The United States and Japan’s strong national security relationship.....	6
B.    The United States and Japan have a committed political relationship.....	9
C.    The United States and Japan have a robust economic relationship that benefits both countries. ....	12
D.    The United States and Japan have an enriching cultural relationship.....	15
II.    A decision blocking the proposed acquisition of U.S. Steel by Nippon Steel will risk deterring Japanese and other foreign investment in the United States by creating legal uncertainty.....	16
<b>CONCLUSION.....</b>	<b>20</b>
<b>CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE- STYLE REQUIREMENTS .....</b>	<b>22</b>
<b>CERTIFICATE OF SERVICE .....</b>	<b>23</b>

## TABLE OF AUTHORITIES

	Page(s)
<b>Statutes</b>	
50 U.S.C. § 4565 .....	18, 19
<b>Regulations</b>	
31 C.F.R. § 800.102 .....	18
<b>Other Authorities</b>	
<i>About the Fellowship</i> , MANSFIELD FELLOWSHIP, <a href="https://mansfieldfellows.org/about-the-fellowship/">https://mansfieldfellows.org/about-the-fellowship/</a> .....	11
<i>About Us</i> , TOMODACHI, <a href="https://usjapantomodachi.org/about-us/">https://usjapantomodachi.org/about-us/</a> .....	15
<i>Activities of U.S. Affiliates of Foreign Multinational Enterprises: Preliminary 2022 Statistics</i> , BUREAU OF ECONOMIC ANALYSIS, 2022p-PartII-A1-A11.xls .....	13
<i>AUKUS Defence Ministers' Joint Statement</i> , April 9, 2024. <a href="https://www.minister.defence.gov.au/statements/2024-04-09/aukus-defence-ministers-joint-statement">https://www.minister.defence.gov.au/statements/2024-04-09/aukus-defence-ministers-joint-statement</a> .....	8
Foreign Direct Investments (FDI): Japan, INTERNATIONAL TRADE ADMINISTRATION, <a href="https://www.trade.gov/sites/default/files/2024-09/Japan-508.pdf">https://www.trade.gov/sites/default/files/2024-09/Japan-508.pdf</a> .....	14
<i>Forum reinforces US-Japan acquisition cooperation efforts</i> , <a href="https://www.dcm.mil/News/Article-View/Article/3935423/forum-reinforces-us-japan-acquisition-cooperation-efforts/">https://www.dcm.mil/News/Article-View/Article/3935423/forum-reinforces-us-japan-acquisition-cooperation-efforts/</a> .....	8
<i>History of the Cherry Trees</i> , NATIONAL PARK SERVICE, <a href="https://www.nps.gov/subjects/cherryblossom/history-of-the-cherry-trees.htm">https://www.nps.gov/subjects/cherryblossom/history-of-the-cherry-trees.htm</a> .....	15
<a href="https://www.defense.gov/News/Releases/Release/Article/3852169/joint-statement-of-the-security-consultative-committee-22/">https://www.defense.gov/News/Releases/Release/Article/3852169/joint-statement-of-the-security-consultative-committee-22/</a> ; .....	8
<a href="https://www.state.gov/u-s-security-cooperation-with-japan/">https://www.state.gov/u-s-security-cooperation-with-japan/</a> .....	7

<i>Japan - Market Overview</i> , INTERNATIONAL TRADE ADMINISTRATION, <a href="https://www.trade.gov/country-commercial-guides/japan-market-overview">https://www.trade.gov/country-commercial-guides/japan-market-overview</a> .....	14
Japan PM Urges Biden to Approve Nippon-U.S. Steel Deal, Sources Say, REUTERS, <a href="https://www.reuters.com/markets/deals/japan-pm-ishiba-urges-biden-approve-nippon-us-steel-deal-sources-say-2024-11-26/">https://www.reuters.com/markets/deals/japan-pm-ishiba-urges-biden-approve-nippon-us-steel-deal-sources-say-2024-11-26/</a> .....	20
<i>Joint Statement between President Joe Biden and Prime Minister Kishida Fumio on January 13, 2023</i> . MINISTRY OF FOREIGN AFFAIRS, JAPAN, <a href="https://www.mofa.go.jp/files/100446109.pdf">https://www.mofa.go.jp/files/100446109.pdf</a> .....	10
Melissa Viola and John P. Hogan, <i>Supply Chain Weaknesses are a Threat to National Security</i> , THE ASPEN INSTITUTE, <a href="https://www.aspeninstitute.org/blog-posts/supply-chain-weaknesses-are-a-threat-to-national-security/">https://www.aspeninstitute.org/blog-posts/supply-chain-weaknesses-are-a-threat-to-national-security/</a> .....	9
Orhan Akisik, The impact of financial development, IFRS, and rule of law on foreign investments: A cross-country analysis, International Review of Economics & Finance, Volume 69, 2020 .....	17
<i>Position on a historical-cost basis and direct investment income without current-cost adjustment by country of UBO and by country of foreign parent (2008-2019)</i> , BUREAU OF ECONOMIC ANALYSIS, FDIUS-UBO-FP-COUNTRY-2008-2019.XLSX .....	13
<i>Position on a historical-cost basis and direct investment income without current-cost adjustment by country of UBO and by country of foreign parent (2020-2023)</i> , BUREAU OF ECONOMIC ANALYSIS, fdius-ubo-fp-country-2020-2023.xlsx .....	12, 13
<i>President Donald J. Trump Has Reached Agreements with Japan to Improve Trade Between Our Nations</i> , THE WHITE HOUSE, <a href="https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-reached-agreements-japan-improve-trade-nations/">https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-reached-agreements-japan-improve-trade-nations/</a> .....	14

<i>Remarks by President Trump and Prime Minister Abe in Joint Press Conference</i> , THE NATIONAL ARCHIVES, <a href="https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-prime-minister-abe-japan-joint-press-conference-3/">https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-prime-minister-abe-japan-joint-press-conference-3/</a> .....	11
<i>Remarks by President Trump at the World Economic Forum</i> , THE WHITE HOUSE, <a href="https://www.whitehouse.gov/remarks/2025/01/remarks-by-president-trump-at-the-world-economic-forum/">https://www.whitehouse.gov/remarks/2025/01/remarks-by-president-trump-at-the-world-economic-forum/</a> .....	16
<i>Statement of Mike Mansfield, former U.S. Senator and Ambassador to Japan</i> . THE MAUREEN AND MIKE MANSFIELD FOUNDATION, <a href="https://mansfieldfdn.org/about/about-maureen-and-mike-mansfield/mike-mansfield/mike-mansfield-in-his-own-voice/">https://mansfieldfdn.org/about/about-maureen-and-mike-mansfield/mike-mansfield/mike-mansfield-in-his-own-voice/</a> .....	5, 9
Treaty and Protocol between the United States of America and Japan regarding friendship, commerce and navigation, DEPARTMENT OF TRANSPORTATION, <a href="https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/ports/american-fisheries-act/6411/fcnjapan.pdf">https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/ports/american-fisheries-act/6411/fcnjapan.pdf</a> .....	10
Treaty of Mutual Cooperation and Security between the United States of America and Japan and Status of Forces Agreement (1960), <a href="https://www.cia.gov/readingroom/docs/CIA-RDP07-00469R000100950001-2.pdf">https://www.cia.gov/readingroom/docs/CIA-RDP07-00469R000100950001-2.pdf</a> .....	7
<i>United States-Japan Joint Leaders' Statement, April 10, 2024</i> . <a href="https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/04/10/united-states-japan-joint-leaders-statement/">https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/04/10/united-states-japan-joint-leaders-statement/</a> .....	8
<i>United States-Japan Joint Leaders' Summit</i> , JAPAN DEPARTMENT OF FOREIGN AFFAIRS. <a href="https://www.mofa.go.jp/files/100652147.pdf">https://www.mofa.go.jp/files/100652147.pdf</a> .....	12
Welcome to SelectUSA, INTERNATIONAL TRADE ADMINISTRATION, <a href="https://www.trade.gov/selectusa">https://www.trade.gov/selectusa</a> .....	14
<i>What Does the G7 Do?</i> , THE COUNCIL ON FOREIGN RELATIONS, <a href="https://www.cfr.org/backgrounder/what-does-g7-do">https://www.cfr.org/backgrounder/what-does-g7-do</a> .....	11
Z. Drabek and W. Payne, “The Impact of Transparency on Foreign Direct Investment”, <i>Journal of Economic Integration</i> (2002) .....	17



**GLOSSARY**

CFIUS	Committee on Foreign Investment in the United States
DPA	Defense Production Act
FDI	Foreign Direct Investment
JCCI	The Japan Chamber of Commerce and Industry
JUBC	The Japan-U.S. Business Counsel
SME	Small and Medium-Sized Enterprises

## **STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE OF AMICI CURIAE**

Long recognized and respected as the leading voice for Japanese business and industry, Keidanren (Japan Business Federation) (“Keidanren”) seeks to establish consensus in the Japanese business community on a variety of important domestic and international issues and works for their steady and prompt resolution. Keidanren’s membership includes 1,555 Corporate Members, 107 Nationwide Industrial Associations, and 47 Regional Economic Organizations. In carrying out its mission, Keidanren communicates with a wide range of stakeholders, including political leaders, government agencies, policymakers, labor unions, and citizens. Keidanren also works for the resolution of international issues and the development of closer economic relations with various countries through policy dialogue with the governments and economic associations of each country as well as international organizations.

The Japan Chamber of Commerce and Industry (“JCCI”) is a leading economic organization comprising 515 chambers of commerce and industry across Japan, representing a total of 1.26 million member companies. Established in 1922, JCCI has played a pivotal role in supporting business development.

Operating under Japan’s Chamber of Commerce and Industry Act, the JCCI functions as a private-sector regional economic organization. It provides direct support to local chambers of commerce and industry, assists Small and Medium-

Sized Enterprises (“SMEs”) and local communities, promotes international private-sector economic exchanges, and fosters industrial human resources through certification examinations.

At the core of these activities is a strong commitment to addressing the diverse challenges faced by SMEs and local communities, with the ultimate goal of revitalizing Japan’s economy. All JCCI initiatives are undertaken with this mission in mind.

KEIZAI DOYUKAI (Japan Association of Corporate Executives) (“DOYUKAI”) is a private, nonprofit, and nonpartisan organization, established in 1946 by business leaders committed to Japan’s economic reconstruction. Comprising approximately 1,700 top executives from 1,000 corporations, DOYUKAI serves as a platform where members participate as individuals, transcending corporate or sectoral interests to seek optimal policy solutions for society as a whole. In pursuing its mission, DOYUKAI engages in dialogues and collaboration with government officials, labor organizations, social sectors and international organizations. Committed to fostering bilateral relations with key nations and contributing to global sustainable growth, DOYUKAI promotes direct engagement of business leaders in international dialogue.

Established in 1971, the Japan-U.S. Business Council (“JUBC”) has worked with the U.S. Chamber of Commerce and other organizations to promote long term

economic relationships between the two countries, including hosting annual conferences and developing policy proposals. JUBC membership consists of 70 industry leading companies, each involved deeply in business between Japan and the U.S. JUBC also works closely with business organizations and government ministries. Through its history and activities, JUBC has attained a profound insight into both Japanese and the U.S. businesses, and the relationship between the two countries.

Because of their roles as leading voices for Japanese business organizations, Amici have a special perspective on issues concerning Japanese businesses and the relationship between Japan and the United States. Transactions such as the proposed acquisition of U.S. Steel by Nippon Steel are therefore of special interest to Amici and their members. Former President Biden's decision to block the transaction raises concern among Amici and their members. Amici submit this brief to emphasize the close national security, political, economic, and cultural ties that the U.S. and Japan share, as well as the potential negative impact that blocking the transaction could have on foreign direct investment ("FDI") from Japan, and other countries, into the United States.

Pursuant to Fed. R. App. P. 29, all parties have consented to the filing of this brief.

## ARGUMENT

The United States and Japan are staunch allies with a well-established and vital relationship. The cherry blossoms that line the Tidal Basin in Washington D.C.—a gift from Tokyo’s mayor to the United States in 1909—are an enduring symbol of the bonds between the two countries. Those bonds have been reaffirmed by U.S. Presidents past and present. They manifest themselves in national security cooperation, political ties as two of the world’s largest democracies, economic cooperation (including via cross-border trade), and enriching cultural connections. The U.S.-Japan relationship has been aptly described as “the most important bilateral relationship in the world, bar none.”<sup>1</sup>

Former President Biden’s decision to block the proposed acquisition of U.S. Steel by Nippon Steel is hard to reconcile with the extensive, well-established relationships between the United States and Japan. No other Japanese transaction with a United States company has been similarly blocked. It is unclear why the Committee on Foreign Investment in the United States (“CFIUS”) could not find mitigation measures to allow the deal to proceed.

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<sup>1</sup> *Statement of Mike Mansfield, former U.S. Senator and Ambassador to Japan.*  
THE MAUREEN AND MIKE MANSFIELD FOUNDATION,  
<https://mansfieldfdn.org/about/about-maureen-and-mike-mansfield/mike-mansfield/mike-mansfield-in-his-own-voice/>

The decision to block the transaction creates uncertainty for any company or investor seeking to engage in foreign direct investment in the United States, including Japanese companies and investors. Legal and deal certainty are necessary to create an environment for foreign investment in the U.S. to thrive. Without it, companies and investors may reconsider before deploying capital that is beneficial to both investors and the United States.

**I. Japan and the United States are close allies with a strong, longstanding, and mutually beneficial national security, political, economic and cultural relationship.**

The relationship between the United States and Japan is strong and multifaceted. It includes a well-established partnership on national security matters, a steadfast political relationship, a robust economic relationship, and enriching cultural exchanges. These deep-rooted bonds provide important context for why the decision to block the proposed acquisition of U.S. Steel by Nippon Steel was so surprising and creates uncertainty.

**A. The United States and Japan's strong national security relationship**

The United States and Japan maintain close coordination and collaboration on mutual national security concerns. This relationship has deepened over time, with Japan becoming one of the United States' closest allies. Security and defense cooperation has grown increasingly intertwined since its beginning nearly 75 years

ago when the United States-Japan Security Treaty was entered into (in 1951).<sup>2</sup> In 1960, the treaty was updated as the Treaty of Mutual Cooperation and Security, to reflect the countries' partnership during the Cold War to provide mutual defense obligations and authorize U.S. military bases in Japan.

Since these beginnings, the strategic defense partnership has grown. Currently, Japan hosts approximately 55,000 U.S. military personnel. 90% of Japan's defense imports are U.S.-origin material and technology. The United States and Japan are engaged in more than \$20 billion in active U.S. government military sales, including for advanced weapons systems. Since 2015, U.S. defense companies have exported more than \$12 billion in defense equipment and components to Japan.<sup>3</sup>

More recently, in response to the increasingly perilous security situation in East Asia, the United States and Japan have accelerated their strategic partnership to include integrating their respective defense industrial bases to address shared threats. In April 2024, then-President Biden and then-Prime Minister Fumio Kishida committed to deepen defense industrial cooperation, announcing strategic initiatives

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<sup>2</sup> Treaty of Mutual Cooperation and Security between the United States of America and Japan and Status of Forces Agreement (1960), <https://www.cia.gov/readingroom/docs/CIA-RDP07-00469R000100950001-2.pdf>

<sup>3</sup> <https://www.state.gov/u-s-security-cooperation-with-japan/>

to strengthen defense security to “maximally align” U.S. and Japanese economic and technology strategies, to strengthen the industrial base and build strategic emerging industries.<sup>4</sup> A Forum on Defense Industrial Cooperation, Acquisition and Sustainment was formed to jointly leverage the U.S. and Japanese defense industrial bases through integration of defense industrial policies, acquisitions and development.<sup>5</sup> These multilateral efforts aim to pool the participants’ defense sectors and “bolster industry and innovation sector collaboration.”<sup>6</sup> Subsequent meetings between the U.S. Secretaries of Defense and State and their Japanese counterparts have furthered the goal of integrating the Japanese and U.S. defense industrial bases, by focusing on strengthening joint capabilities and ways to streamline cooperation between U.S. and Japanese defense contractors.<sup>7</sup>

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<sup>4</sup> *United States-Japan Joint Leaders’ Statement, April 10, 2024*, <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/04/10/united-states-japan-joint-leaders-statement/>

<sup>5</sup> *Id.*

<sup>6</sup> *AUKUS Defence Ministers’ Joint Statement, April 9, 2024*, <https://www.minister.defence.gov.au/statements/2024-04-09/aukus-defence-ministers-joint-statement>

<sup>7</sup> <https://www.defense.gov/News/Releases/Release/Article/3852169/joint-statement-of-the-security-consultative-committee-22/>; *Forum reinforces US-Japan acquisition cooperation efforts*, <https://www.dema.mil/News/Article-View/Article/3935423/forum-reinforces-us-japan-acquisition-cooperation-efforts/>



Japan is also vital to another feature of United States's national security. Japan facilitates a robust supply chain in the Indo-Pacific region. A well-functioning supply chain ensures that the United States and its citizens have access to necessary goods and services—an important element of national security.<sup>8</sup>

The decision to block the proposed acquisition of U.S. Steel by Nippon Steel is inconsistent with this strong and growing national security relationship. The timing of events demonstrates the incongruity. Then-President Biden first said in March 2024 that he would block the deal. The very next month he made a joint announcement with then-Prime Minister Kishida to deepen defense cooperation between the two countries. These two events, so close in time, are difficult to reconcile and contribute to the uncertainty businesses feel about the decision to block the transaction and what it portends for future investments in the United States.

**B. The United States and Japan have a committed political relationship.**

Japan and the United States have an equally robust political relationship. As noted at the outset, it has been described as “the most important bilateral relationship in the world, bar none.”<sup>9</sup> That importance stems from the fact that the two countries

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<sup>8</sup> See Melissa Viola and John P. Hogan, *Supply Chain Weaknesses are a Threat to National Security*, THE ASPEN INSTITUTE, <https://www.aspeninstitute.org/blog-posts/supply-chain-weaknesses-are-a-threat-to-national-security/>

<sup>9</sup> *Statement of Mike Mansfield, former U.S. Senator and Ambassador to Japan*. THE MAUREEN AND MIKE MANSFIELD FOUNDATION,

represent two of the largest democracies measured by GDP. An early fruit of this political relationship was the 1953 United States-Japan Treaty of Friendship, Commerce and Navigation.<sup>10</sup> Recent statements from President Trump and former President Biden underscore the strong political ties between the two nations.

In January 2023, then-President Biden and then-Prime Minister Kishida issued a joint statement that the United States and Japan's cooperation "today is unprecedented, rooted in our shared vision of a free and open Indo-Pacific and a peaceful and prosperous world, guided by our shared values including the rule of law." The leaders joined together in stating that "we look forward to advancing domestic and global prosperity and upholding a free, fair and rules-based economic order."<sup>11</sup>

In his first term in office, President Trump repeatedly spoke of the importance, stability, and strength of the U.S.-Japan relationship: "[t]he alliance between the United States and Japan is a cornerstone of stability and prosperity in the region and

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<https://mansfieldfdn.org/about/about-maureen-and-mike-mansfield/mike-mansfield/mike-mansfield-in-his-own-voice/>

<sup>10</sup> Treaty and Protocol between the United States of America and Japan regarding friendship, commerce and navigation, DEPARTMENT OF TRANSPORTATION, <https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/ports/american-fisheries-act/6411/fcnjapan.pdf>

<sup>11</sup> *Joint Statement between President Joe Biden and Prime Minister Kishida Fumio on January 13, 2023*. MINISTRY OF FOREIGN AFFAIRS, JAPAN, <https://www.mofa.go.jp/files/100446109.pdf>

all around the world.” President Trump described the alliance as “steadfast and ironclad,” “a strong alliance indeed.”<sup>12</sup>

These statements from both recent Presidents are emblematic of the close political ties between Japan and the United States. Regular meetings and consultations are the norm. One example is that each country is a member of the G7, “an informal bloc of industrialized democracies . . . that meets annually to discuss issues such as global economic governance, international security, and, most recently, artificial intelligence (AI).”<sup>13</sup> Another example is the Mansfield Fellowship, which was “established by the U.S. Congress in 1994 to build a corps of U.S. federal government employees with proficiency in the Japanese language and practical, firsthand knowledge about Japan and its government.”<sup>14</sup> Through the program, federal officials, including some in the military, are placed with certain Japanese government departments after intensive training in Japanese language and

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<sup>12</sup> *Remarks by President Trump and Prime Minister Abe in Joint Press Conference*, THE NATIONAL ARCHIVES, <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-prime-minister-abe-japan-joint-press-conference-3/>

<sup>13</sup> *What Does the G7 Do?*, THE COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/backgrounder/what-does-g7-do>

<sup>14</sup> *About the Fellowship*, MANSFIELD FELLOWSHIP, <https://mansfieldfellows.org/about-the-fellowship/>

culture.<sup>15</sup> The program not only evinces the continuing ties between the United States and Japan, but also demonstrates a clear level of trust between the Japanese and United States governments. The program has been recognized as recently as a 2023 summit between the United States and Japan.<sup>16</sup>

The actions and statements of U.S. and Japanese leaders consistently reaffirm that Japan, as one of the world's major democratic powers, is one of the United States' closest political allies.

**C. The United States and Japan have a robust economic relationship that benefits both countries.**

The United States and Japan also have a thriving economic relationship. That relationship not only benefits Japan and Japanese businesses, it provides major, quantifiable benefits for the United States and its citizens. Numerous data points bear this out.

Japanese businesses engage in significant investment in the United States. Based on the most recent data, on a historical cost basis, Japanese-based entities have invested upwards of \$783 *billion* dollars in the United States.<sup>17</sup> That is the

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<sup>15</sup> *Id.*

<sup>16</sup> *United States-Japan Joint Leaders' Summit*, JAPAN DEPARTMENT OF FOREIGN AFFAIRS, <https://www.mofa.go.jp/files/100652147.pdf> at 10.

<sup>17</sup> *Position on a historical-cost basis and direct investment income without current-cost adjustment by country of UBO and by country of foreign parent*

most foreign direct investment in the U.S. of any country in the world.<sup>18</sup> Japan has held that top spot for five years running.<sup>19</sup>

This investment provides tangible benefits to U.S. citizens. In 2022, Japanese companies created more than 968,000 jobs in the United States—the second largest of any foreign employer.<sup>20</sup> Japanese entities in the United States also produced around \$11.5 billion dollars’ worth of investments in research and development.<sup>21</sup> And, in 2022, Japanese affiliates accounted for more than \$82 billion in exports from the United States—the highest of any foreign nation investor.<sup>22</sup>

The data reflect the strong and robust economic cooperation between the two countries. Given this amount of investment, and the resulting benefits that redound to American citizens, it is unsurprising that the United States considers Japan a

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(2020-2023), BUREAU OF ECONOMIC ANALYSIS, [FDIUS-UBO-FP-COUNTRY-2020-2023.XLSX](#) (emphasis added).

<sup>18</sup> *Id.*; see also *Position on a historical-cost basis and direct investment income without current-cost adjustment by country of UBO and by country of foreign parent* (2008-2019), BUREAU OF ECONOMIC ANALYSIS, [FDIUS-UBO-FP-COUNTRY-2008-2019.XLSX](#)

<sup>19</sup> *Activities of U.S. Affiliates of Foreign Multinational Enterprises: Preliminary 2022 Statistics*, BUREAU OF ECONOMIC ANALYSIS, [2022p-PartII-A1-A11.xls](#)

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

preferred trading partner and encourages commerce between Japanese and U.S. businesses.<sup>23</sup> Tangible evidence of that encouragement is SelectUSA, a program “led by the U.S. Department of Commerce that focuses on facilitating job-creating business investment into the United States and raising awareness of the critical role that economic development plays in the U.S. economy.”<sup>24</sup> Japan is an active participant in that program.<sup>25</sup>

Given the data and these programs, it is unsurprising that in discussing a new trade deal between the United States and Japan in 2018, President Trump remarked that “we’re going to have a really great relationship, better than ever before on trade. I think it’s going to be better for Japan and better for the United States.”<sup>26</sup>

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<sup>23</sup> See *Japan - Market Overview*, INTERNATIONAL TRADE ADMINISTRATION, <https://www.trade.gov/country-commercial-guides/japan-market-overview>

<sup>24</sup> Welcome to SelectUSA, INTERNATIONAL TRADE ADMINISTRATION, <https://www.trade.gov/selectusa>

<sup>25</sup> Foreign Direct Investments (FDI): Japan, INTERNATIONAL TRADE ADMINISTRATION, <https://www.trade.gov/sites/default/files/2024-09/Japan-508.pdf>

<sup>26</sup> *President Donald J. Trump Has Reached Agreements with Japan to Improve Trade Between Our Nations*, THE WHITE HOUSE, <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-reached-agreements-japan-improve-trade-nations/>

**D. The United States and Japan have an enriching cultural relationship.**

Another important facet of the United States-Japan relationship is the vibrant cultural exchange between the two countries. This dates as far back as the gift of more than 3,000 cherry trees from the Mayor of Tokyo in 1909-10 to be planted along the Tidal Basin in Washington D.C.<sup>27</sup>

This cultural relationship continues to strengthen to this day. This is demonstrated by several programs fostering exchange between the two nations. One such program is the TOMODACHI Initiative. This initiative was started after the Great Earthquake in the Tohoku region of Japan in 2011 and supports various programs and scholarships.<sup>28</sup> It is led by the U.S. Embassy in Japan, the U.S.-Japan Council and the government of Japan.<sup>29</sup> Its mission is to “foster a ‘TOMODACHI generation’ of young American and Japanese leaders who are committed to and engaged in strengthening U.S.-Japan relations, appreciate each other’s countries and cultures, and possess the global skills and mindsets needed to contribute to and thrive in a more cooperative, prosperous, and secure world.”<sup>30</sup>

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<sup>27</sup> *History of the Cherry Trees*, NATIONAL PARK SERVICE, <https://www.nps.gov/subjects/cherryblossom/history-of-the-cherry-trees.htm>

<sup>28</sup> *About Us*, TOMODACHI, <https://usjapantomodachi.org/about-us/>

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

These examples and programs only scratch the surface of the richness of the cultural exchange between the United States and Japan.

**II. A decision blocking the proposed acquisition of U.S. Steel by Nippon Steel will risk deterring Japanese and other foreign investment in the United States by creating legal uncertainty.**

Then-President Biden's decision to block the proposed acquisition of U.S. Steel by Nippon Steel is difficult to reconcile with the close relationships between the United States and Japan. That action has increased uncertainty and concerns, not only within the Japanese business community, but with businesses from other foreign nations that routinely invest in the United States. President Trump recently made clear in remarks to the World Economic Forum that his administration is interested in growing foreign investment. He stated: that "[m]y message to every business in the world is very simple: Come make your product in America, and we will give you among the lowest taxes of any nation on Earth" and "[u]nder the Trump administration, there will be no better place on Earth to create jobs, build factories, or grow a company than right here in the good old USA."<sup>31</sup>

But courting and maintaining foreign investment requires a stable and transparent legal framework within which foreign businesses can operate.

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<sup>31</sup> *Remarks by President Trump at the World Economic Forum*, THE WHITE HOUSE, <https://www.whitehouse.gov/remarks/2025/01/remarks-by-president-trump-at-the-world-economic-forum/>



Economists studying FDI have consistently identified that “[i]n addition to high-quality accounting standards, rule of law and property rights associated with these standards are *the most important* institutional elements for foreign investments.”<sup>32</sup> On the flip side, the lack of a stable and predictable rules of law and a transparent legal system for foreign investment “can pose severe barriers to business.”<sup>33</sup> This is because “[i]f the quality of government service is unpredictable, companies’ exposure to additional risks is increased” and “their ability to cover against these risks is impeded due to the unpredictable nature of government service.”<sup>34</sup> Studies have found that transparency and consistent application of legal standards is particularly important for cross-border mergers and acquisitions because they tend to require various governmental approvals.<sup>35</sup>

Here, the reasons given for the decision to block the proposed acquisition of U.S. Steel by Nippon Steel, and the inability to fully assess the confidential process for making the decision, contribute to uncertainty within not only the Japanese

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<sup>32</sup> Orhan Akisik, The impact of financial development, IFRS, and rule of law on foreign investments: A cross-country analysis, *International Review of Economics & Finance*, Volume 69, 2020, Pages 815-838 (emphasis added).

<sup>33</sup> Z. Drabek and W. Payne, “The Impact of Transparency on Foreign Direct Investment, *Journal of Economic Integration* (2002): 777-810.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

business community, but business communities in other nations as well. CFIUS' report to the President identified "national security concerns," but also reflected a split within the Committee regarding the ability to mitigate them.<sup>36</sup> The CFIUS regulations require that the national security analysis "shall include credible evidence demonstrating the risk and an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction."<sup>37</sup> While Petitioners raise concerns relating to process and fairness, the Japanese business community was surprised that CFIUS concluded that its concerns could not be addressed through mitigation measures. The Japanese business community still struggles to comprehend how a transaction between Japanese and United States entities is inconsistent with the countries' strong and strengthening relationships.

Japan's status as a preferred trading partner and the steadfast alliance between Japan and the U.S. is relied on by Japanese companies making investment decisions. Blocking a transaction should be, and traditionally has been, a measure of last resort. In fact, the governing statute requires that CFIUS seek to mitigate national security concerns, and thereby allow a transaction to proceed.<sup>38</sup> The Defense Production Act

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<sup>36</sup> Pet. at 9.

<sup>37</sup> 31 C.F.R. § 800.102.

<sup>38</sup> See 50 U.S.C. § 4565(l)(3)(A)(i) (providing that CFIUS may "negotiate, enter into or impose, and enforce any agreement or condition with any party to the

(“DPA”) confirms that Congress intended blocking a transaction to be an action of last resort:

The President may exercise the authority conferred by paragraph (1), only if the President finds that— . . . (B) provisions of law, other than this section and the International Emergency Economic Powers Act, do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President.<sup>39</sup>

The requirement that CFIUS first look to mitigation measures is an integral part of the CFIUS process relied on by international investors. It ensures that national security concerns will be addressed whenever feasible, while also giving businesses and their respective countries the economic benefits of free trade.

It is unclear why mitigation measures were not available to address the issues presented by this transaction. While Amici respect the U.S. government’s need to maintain confidentiality with respect to the CFIUS process, the justification for the action taken in this transaction is elusive, especially in the light of the close U.S.-Japan relationship and the fact that no President has exercised disapproval authority before with a transaction involving a Japanese acquiror.

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covered transaction in order to mitigate any risk to the national security of the United States that arises as a result of the covered transaction.”).

<sup>39</sup> 50 U.S.C. § 4565(d)(4).

Moreover, because the uncertainty stems in part from the lack of transparency, there is greater risk of discouraging otherwise beneficial foreign investment into the United States. An example of this concern is reflected in Prime Minister Shigeru Ishiba's letter to then-President Biden urging him not to block the transaction. According to Reuters, in the letter, the Prime Minister reportedly wrote that "Japan stands as the largest investor in the U.S., with its investments showing a steady upward trend. Continuing this upward trend of Japanese investment in the U.S. benefits both of our countries, showcasing the robustness of the Japan-U.S. Alliance to the world."<sup>40</sup> The Prime Minister went on to "respectfully ask for the U.S. government to approve the planned acquisition by Nippon Steel so as not to cast a shadow on the achievements you have accumulated over the past four years."<sup>41</sup>

## CONCLUSION

For these reasons, Amici Curiae support the Petitioners.

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<sup>40</sup> Japan PM Urges Biden to Approve Nippon-U.S. Steel Deal, Sources Say, REUTERS, <https://www.reuters.com/markets/deals/japan-pm-ishiba-urges-biden-approve-nippon-us-steel-deal-sources-say-2024-11-26/>

<sup>41</sup> *Id.*

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Respectfully submitted,

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1. This Brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 3,247 words, excluding the parts of the Brief exempted by Federal Rule Appellate Procedure 32(f) and Circuit Rule 32(e)(1).

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Dated: February 10, 2025

/s/ John P. Kabealo

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of February 2025, I caused copies of the foregoing Brief of Amici Curiae to be served upon the parties and their counsel through the CM/ECF filing system.

Dated: February 10, 2025

/s/ John P. Kabealo